Paper No. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte FRANK SALES JR.

Appeal No. 2002-2140
Application No. 09/470,471

ON BRIEF

Before ABRAMS, FRANKFORT, and NASE, Administrative Patent Judges.

NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 2 and 3, which are all of the claims pending in this application.

BACKGROUND

The appellant's invention relates to a skid steer loader vehicle and more particularly to side dump buckets for dumping material to the side of the loader (specification, p. 1). Claims 2 and 3 read as follows:

> 2. A side dumping loader comprising:
> a.) a skid steer loader with a dump bucket attached thereto;
> b.) a cradle for supporting said dump bucket;
> c.) a pintle, serving as a point of attachment between said cradle and said dump bucket;
> d.) a hydraulic assembly comprising a cylinder portion and rod portion, wherein said cylinder portion is attached to said cradle and said rod is attached to said dump bucket; wherein the rod portion, when extended, causes said dump bucket to rotate at said pintle, from a horizontal position to a sloped position; [and]
> e.) a recess in said dump bucket, positioned so as to enclose said hydraulic cylinder when the bucket is in a horizontal position.
>
> 3. A side dumping loader in accordance with claim 2, further comprising a pin attached to said bucket and a ring attached to said cradle, wherein said pin and said ring are aligned so that said pin is inserted in said ring when said bucket is in a horizontal position.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Leijon	3,531,007	Sept. 29, 1970

Claims 2 and 3 stand rejected under 35 U.S.C. § 103 as being unpatentable over Leijon '007, Leijon '819 or Uchida in view of Liebrecht.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejection, we make reference to the answer (Paper No. 12, mailed April 30, 2002) for the examiner's complete reasoning in support of the rejection, and to the brief (Paper No. 10, filed January 17, 2002) and reply brief (Paper No. 13, filed June 27, 2002) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. Upon evaluation of all the evidence before us, it is our conclusion that the evidence adduced by the examiner is insufficient to establish a prima facie case of obviousness with respect to the claims under appeal. Accordingly, we will not sustain the examiner's rejection of claims 2 and 3 under 35 U.S.C. § 103. Our reasoning for this determination follows.

1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A prima facie case of obviousness is established by presenting evidence that would have led one of ordinary skill in the art to combine the relevant teachings of the references to arrive at the claimed invention. See In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988) and In re Lintner, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972).

As set forth in the Manual of Patent Examining procedure (MPEP) § 2141 (Eighth Edition, August 2001)

> Office policy has consistently been to follow *Graham v. John Deere Co.*[1] in the consideration and determination of obviousness under 35 U.S.C. 103. As quoted above, the four factual inquires enunciated therein as a background for determining obviousness are briefly as follows:
>
> (A) Determining of the scope and contents of the prior art;
> (B) Ascertaining the differences between the prior art and the claims in issue;
> (C) Resolving the level of ordinary skill in the pertinent art; and
> (D) Evaluating evidence of secondary considerations.

Against this background, the obviousness or non-obviousness of the claimed subject matter under 35 U.S.C. § 103 must be determined.

Thus, initially, the scope and content of the prior art are to be determined. In the prior art rejection before us in this appeal (answer, p. 3), the examiner has very briefly set forth the teachings of the applied prior art.[2]

Secondly, the differences between the applied prior art and the claims at issue are to be ascertained. This the examiner has not done. In that regard, the claims under appeal require the side dumping loader to be a skid steer loader with a dump bucket attached thereto and a recess in the dump bucket positioned so as to enclose the hydraulic cylinder (which rotates the dump bucket about a pintle from a horizontal position to a sloped position) when the bucket is in a horizontal position. Based on our analysis and review of the primary references applied by the examiner (i.e., Leijon '007, Leijon '819 and Uchida) and claim 2, it is our opinion that the differences include the limitation that the side dumping loader is a skid steer loader and that the dump bucket has a recess positioned so as to enclose the hydraulic cylinder (which rotates the dump bucket about a pintle from a horizontal position to a sloped position) when the bucket is in a horizontal position.

Thirdly, the examiner must determine if the ascertained differences between the subject matter sought to be patented and the combined teachings of the applied prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art. The examiner has not determined that the actual differences between the subject matter sought to be patented and the combined teachings of the applied prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art. Moreover, it is clear to us that the teachings of the applied prior art would not have made it obvious at the time the invention was made to a person of ordinary skill in the art to have provided a side dumping bucket on a skid steer loader.

For the reasons set forth above, the examiner has not established a prima facie case of obviousness and accordingly the decision of the examiner to reject claims 2 and 3 under 35 U.S.C. § 103 is reversed.

CONCLUSION

To summarize, the decision of the examiner to reject claims 2 and 3 under 35 U.S.C. § 103 is reversed.

REVERSED

NEAL E. ABRAMS Administrative Patent Judge	)	
CHARLES E. FRANKFORT Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
JEFFREY V. NASE Administrative Patent Judge	)	

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